

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CARDSOFT, INC., et al.

§

v.

§

Case No. 2:08-CV-98-RSP

VERIFONE SYSTEMS, INC., et al.

§

§

MEMORANDUM ORDER

Before the Court is Defendants' Motion to Strike the Supplemental Expert Report of J. Tipton Cole (Dkt. No. 282, filed February 17, 2012). Defendants seek to strike Mr. Cole's supplemental expert report on infringement because it introduces a new opinion on infringement under the doctrine of equivalents. This opinion is allegedly improper because the doctrine of equivalents was not disclosed in CardSoft's infringement contentions, and the expert does not properly apply the doctrine of equivalents. CardSoft argues that Mr. Cole's supplemental report responds to non-infringement arguments that were not disclosed in Defendants' interrogatory responses, and Defendants' expert rebuttal report on infringement relies on theories that are foreclosed by the Court's claim construction.

Good cause does not exist for allowing the supplemental report. To the extent that Defendants' expert offers previously undisclosed non-infringement positions, or advances opinions that are improper under the Court's claim construction, such testimony or opinions will be excluded upon proper motion or objection at trial. CardSoft has already filed a motion to strike those opinions, and still has an opportunity to make objections at trial. Accordingly there is no good cause for the supplemental report. Defendants' motion to strike is **GRANTED**.

SIGNED this 3rd day of June, 2012.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE